



FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1236

RIN 2590-AB10

Prudential Management and Operations Standards

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to amend its prudential management and operations standards Rule (rule) to clarify that FHFA may establish prudential management and operations standards (Standards) as regulations as well as guidelines. The proposed amendments to the rule would also revise definitions and make other conforming changes. FHFA is not proposing to establish new Standards or to revise Standards already established. However, FHFA is proposing that the rule and some of the existing Standards in the appendix to the rule be made applicable to the Office of Finance of the Federal Home Loan Bank System (OF).

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AB10, by any one of the following methods:

- Agency Website: www.fhfa.gov/open-for-comment-or-input.
- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Include the

following information in the subject line of your submission: Comments/RIN 2590-AB10.

- Hand Delivered/Courier: The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590-AB10, Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service: The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590-AB10, Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Clinton Jones, General Counsel, (202) 649-3006, Clinton.Jones@fhfa.gov; or Francisco Medina, Assistant General Counsel, (202) 649-3076, Francisco.Medina@fhfa.gov. These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule and will consider all comments before issuing a final rule. Copies of all comments will be posted without change and will include any personal information provided, such as the commenter's name, address, e-mail address, and telephone number, on the FHFA website at

<http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule, also located on the FHFA website.

II. Background

The Federal Housing Enterprises Financial Safety and Soundness Act (the Safety and Soundness Act) requires the Director of FHFA to establish Standards that address ten subjects relating to the management and operation of the regulated entities, authorizes the Director to establish other Standards in addition to those on the ten listed subjects, and authorizes the Director to establish Standards by regulation or guideline.¹ FHFA currently implements this statutory requirement, which is codified at 12 U.S.C. 4513b (section 4513b), through Standards that it has established as guidelines set forth in an appendix to FHFA's current rule, which is codified at 12 CFR part 1236.

Section 4513b requires a regulated entity that fails to meet a Standard to submit a corrective plan if the Standard is established by regulation, and permits FHFA to require a corrective plan if a regulated entity fails to meet a Standard established by guideline.² Section 4513b also establishes procedural requirements for corrective plans (including FHFA approval), and requires FHFA to establish other procedural requirements by regulation.³

The proposed rule addresses FHFA's determination that a regulated entity has failed to meet a Standard and FHFA's direction to the regulated entity to submit a corrective plan; the contents of a corrective plan and filing deadlines; FHFA's review of a corrective plan and notification to the regulated entity of FHFA's decision on a plan; and the regulated entity's opportunity to request FHFA to amend an approved plan and

¹ 12 U.S.C. 4513b(a).

² *Id.* 4513b(b)(1)(A).

³ *Id.* 4513b(b)(1)(C).

FHFA's review of proposed amendments to the plan.⁴ The proposed rule also addresses procedural coordination of a corrective plan with a capital restoration plan submitted pursuant to 12 U.S.C. 4622, a cease-and-desist order entered into pursuant to 12 U.S.C. 4631 or 4632, a formal or informal agreement, or a response to a report of examination or report of inspection.⁵

Section 4513b specifies the consequences if a regulated entity fails to submit an acceptable plan within the required time period or fails to implement a corrective plan that the Director has approved.⁶ In those cases, the Director must order the regulated entity to correct the deficiency.⁷ Section 4513b also provides the Director with additional discretionary authority to take other actions (including imposing limits on asset growth or requiring increases in capital, as well as taking any other action the Director believes will better carry out the purposes of section 4513b) until the regulated entity meets the standard.⁸ The Director must take at least one of those additional actions for a regulated entity that has failed to submit or implement a corrective plan and has experienced "extraordinary growth" within the 18 months before it failed to meet the standard.⁹

The proposed rule implements these statutory provisions by setting forth a process for FHFA to notify the regulated entity of its intent to issue an order requiring the regulated entity to correct its failure to submit or implement a corrective plan, which must include FHFA's proposed action and, if applicable, FHFA's determination of "extraordinary growth."¹⁰ The proposed rule defines "extraordinary growth," and does so separately for the FHLBanks and the Enterprises.¹¹ The proposed rule provides an opportunity for the regulated entity to respond to an FHFA notice of intent to issue an

⁴ 12 CFR 1236.4.

⁵ *Id.* 1236.4(c)(2)(ii).

⁶ 12 U.S.C. 4513b(b)(2).

⁷ *Id.* 4513b(b)(2)(A).

⁸ *Id.* 4513b(b)(2)(B).

⁹ *Id.* 4513b(b)(3).

¹⁰ 12 CFR 1236.5(b); 12 CFR 1236.5(c)(1).

¹¹ *Id.* 1236.2.

order and sets forth the actions FHFA may take on review of a response or if no response is received.¹² The proposed rule also addresses FHFA's issuance of an order that is immediately final and establishes a process for a regulated entity to appeal such an order.¹³ Finally, the proposed rule addresses a request by a regulated entity for modification or rescission of an order.¹⁴

The proposed rule provides that failure to meet a Standard may constitute an unsafe or unsound practice for purposes of FHFA's enforcement authority.¹⁵ Section 4513b provides that its remedial powers are in addition to any other authority of the Director and thus expressly preserves FHFA's right to exercise any other supervisory or enforcement authority available under the Safety and Soundness Act.¹⁶ The PMOS framework does not limit FHFA's authorities and FHFA will determine the appropriate supervisory response (including the appropriate timing or sequence of supervisory action) based on the facts and circumstances of any failure or violation.

When FHFA proposed the rule and initial Standards in 2011, FHFA did not propose to apply the rule or the Standards to OF on the grounds that several of the statutorily required standards (such as the standards on relating to interest rate, market and credits risks and investment portfolio growth) would not be relevant to OF and statutory examples of corrective actions for noncompliance also would not be applicable.¹⁷ FHFA nonetheless noted that the Safety and Soundness Act, which grants FHFA general supervisory and regulatory authority over OF, would permit FHFA to extend the rule or Standards to OF, or to establish new Standards specifically applicable to OF.¹⁸ Likewise, section 4513b permits FHFA to establish other prudential

¹² *Id.* 1236.5(c)(2) and 1236.5(c)(3).

¹³ *Id.* 1236.5(c)(4).

¹⁴ *Id.* 1236.5(d).

¹⁵ 12 CFR 1236.3(d).

¹⁶ 12 U.S.C. 4513b(c).

¹⁷ 76 FR 35791, 35792 (June 20, 2011).

¹⁸ *Id.*; *see also* 12 U.S.C. 4511(b)(2).

management and operational standards as the Director deems appropriate, and permits FHFA to require a regulated entity to take any other action that the Director determines will better carry out the purposes of section 4513b than the statutorily listed actions.¹⁹ Consequently, it is feasible to establish appropriate Standards and corrective actions for OF.

III. Overview of Proposed Amendments; Section-By-Section Analysis

A. Overview

FHFA is proposing to amend part 1236 to reflect the scope of FHFA's statutory authority to establish Standards as regulations as well as guidelines and to apply the rule and some Standards to OF.

Currently, the rule addresses "prudential standards as guidelines,"²⁰ provides that the Standards "have been adopted as guidelines,"²¹ and states that these Standards "constitute the prudential and operations standards" required by section 4513b.²² In turn, the appendix to part 1236 further provides that guidelines set forth in the appendix "constitute the prudential and operations standards established pursuant" to section 4513b.²³

Taken together, the rule and its appendix imply that the guidelines in the appendix constitute the entirety of the Standards that FHFA has established and that any further Standards adopted by FHFA will similarly be established as guidelines and located in the appendix. That implication is inconsistent with FHFA's statutory authority and recent actions. Specifically, FHFA established Standards by regulation in December 2020 and May 2021.²⁴

¹⁹ 12 U.S.C. 4513b(a)(11) and (b)(2)(B)(iii).

²⁰ 12 CFR 1236.3.

²¹ *Id.* 1236.3(b).

²² *Id.* 1236.3(a).

²³ 12 CFR part 1236, appendix.

²⁴ *See* 12 CFR 1240.1(e)(3) (Enterprise Regulatory Capital Framework) and 12 CFR 1242.1(b) (Enterprise Resolution Planning).

As amended, the rule would expressly reflect FHFA's statutory authority to establish Standards as either regulations or guidelines and to locate Standards established as regulations outside of the appendix to the rule. If amended as proposed, the rule would make clear that guidelines or regulations adopted by FHFA that FHFA identifies as Standards are to be considered Standards for purposes of section 4513b and part 1236.

As an administrative matter, for convenience and clarity, FHFA plans to continue establishing Standards that are guidelines through a **Federal Register** notice and comment process, and will continue locating all Standards established as guidelines in the appendix to part 1236.

FHFA is also proposing to amend the rule and the appendix to part 1236 so that the OF would be subject to the rule and identified Standards. The Standards FHFA proposes to apply to OF are the General Responsibilities of the Board of Directors and Senior Management, and Standards 1, 2, 8, and 10. Standard 1 addresses "Internal Controls and Information Systems." Standard 2 addresses "Independence and Adequacy of Internal Audit Systems." Standard 8 addresses "Overall Risk Management Processes." Standard 10 addresses "Maintenance of Adequate Records." Since adopting the rule in 2012, FHFA has revisited its decision to exclude OF from the rule and has determined that making OF subject to the rule and the identified Standards would further the purposes of section 4513b. Moreover, FHFA could in the future establish Standards by regulation or guideline that would apply only to OF. FHFA welcomes any comments on subjecting OF to the rule and the identified Standards.

Consistent with the foregoing changes, FHFA also proposes to revise and clarify definitions and make conforming changes to part 1236 and its appendix. Proposed changes to the rule are discussed by section and proposed changes to the appendix are discussed by Standard, below.

B. Section 1236.1 – Purpose

This section currently states that part 1236 establishes “the” prudential management and operations standards that are required by section 4513b. That construction was appropriate when part 1236 addressed only the 10 Standards specifically required by statute, and when all Standards established by FHFA were located within the appendix to part 1236. FHFA is proposing to remove “the” and to revise “establishes” to “addresses” to reflect the full scope of part 1236, and to add “and authorized” following “required” to reflect the discretion expressly conferred on FHFA to establish other operational and management Standards as the Director determines to be appropriate. These changes also acknowledge that Standards may be located either in the appendix (if they are established as guidelines) or elsewhere in chapter XII of title 12 of the Code of Federal Regulations (if they are established as regulations).

As appropriate throughout the rule, FHFA is also proposing to revise the terms “a regulated entity,” “any regulated entity,” and “entity” to “a regulated entity or the Office of Finance” to bring the OF within the scope of the rule.

C. Section 1236.2 – Definitions

This section defines terms used in this part. After the rule was adopted by FHFA in 2012, FHFA adopted part 1201 of the FHFA regulations (12 CFR part 1201), one section of which sets forth definitions that apply to all FHFA regulations. FHFA is now proposing to amend § 1236.2 to include a reference to 12 CFR part 1201 as an aid to users of this part. This amendment is not a substantive change, as definitions in 12 CFR part 1201 already apply to terms used in this part.

In addition, FHFA is proposing one change to the definition of “standard” (which is defined within this part) to remove language that referred to § 1236.3(b), on FHFA’s authority to revise Standards established as guidelines. Other changes that FHFA is proposing would cause that reference to become incomplete, as a different section of the rule would now address revisions to Standards established as regulations. On review,

FHFA has determined that the reference to § 1236.3(b) is unnecessary; for that reason, instead of expanding on it, FHFA proposes to delete the reference.

D. Section 1236.3 – Prudential Standards as guidelines or regulations

FHFA is proposing to revise § 1236.3(a) to remove language that effectively repeated the definition of “Standard” set forth at § 1236.2 and thus is unnecessary, and in its place add a sentence acknowledging that, as expressly authorized by statute, FHFA may establish Standards as guidelines or regulations.

Section 1236.3(b) would be amended to clarify that it applies only to Standards established as guidelines (instead of stating that it covers all Standards, which would include those established as regulations). In keeping with FHFA’s prior practice, proposed revisions to § 1236.3(b) would set forth FHFA’s commitment to provide public notice of and seek public comment on Standards that it proposes to establish as guidelines, or on any material modification to a Standard established as a guideline. For efficiency, however, FHFA could revoke a Standard adopted as a guideline at any time by order or notice. FHFA requests comment on these proposed processes for establishing, modifying, and revoking Standards established as guidelines.

FHFA proposes to revise § 1236.3(c) to address Standards established as regulations. Although section 4513b expressly authorizes FHFA to establish Standards as regulations, FHFA had not done so when part 1236 was promulgated in 2012. As a result, part 1236 does not currently address Standards that have been established as regulations after part 1236 was promulgated.

As proposed to be amended, § 1236.3(c) acknowledges that the Administrative Procedure Act sets forth the process for establishing Standards as regulations and amending such Standards. FHFA also proposes to clarify that Standards established as regulations may be located in part 1236, may amend existing regulations, or may be undertaken as entirely new rulemakings that would be located outside of part 1236. For

example, FHFA may decide to locate a Standard established as a regulation that applies to all of its regulated entities within part 1236, but may locate a Standard established as a regulation that applies only to the Enterprises (including any affiliate of an Enterprise), or only to the Federal Home Loan Banks (including OF), outside of part 1236. Any Standard established as a regulation would be identified as a Standard in that regulation.²⁵ Proposed § 1236.3(c) would also make clear that Standards established as regulations are subject to the remedial and enforcement provisions of part 1236 (because they are Standards) as well as statutory enforcement provisions (because they are regulations).

FHFA proposes to re-number current § 1236.3(c) as § 1236.3(d), and to amend it to clarify that if there is a direct conflict between a Standard *adopted as a guideline* and an FHFA regulation, the regulation will control. This clarification retains the sense of current § 1236.3(c) (which recognizes the primacy of an FHFA regulation over other agency guidance), but it was not necessary when, for purposes of part 1236, all Standards were guidelines. FHFA's authority to determine that failure to meet a Standard is an unsafe or unsound practice, currently addressed in § 1236.3(d), would be relocated to § 1236.4(a) (addressed below).

E. Section 1236.4 – Failure to meet a Standard; corrective plans

Consistent with other proposed changes to part 1236, FHFA is proposing to expand the scope of § 1236.4, which addresses the failure to meet a Standard and submission of corrective plans, to cover Standards established as regulations. Other changes are proposed to clarify the application of § 1236.4.

As already noted, FHFA proposes to relocate its authority to determine that failure to meet a Standard is an unsafe or unsound practice, currently addressed in § 1236.3(d), to § 1236.4(a). FHFA believes this authority is more appropriately located in § 1236.4, with other regulatory provisions addressing failure to meet a Standard.

²⁵ See, e.g., 12 CFR 1240.1(e)(3).

Section 1236.4(b), which addresses the submission of corrective plans, currently implies that FHFA has discretion in all cases to decide whether to require a corrective plan from a regulated entity that fails to meet a Standard. That implication was correct when part 1236 was originally adopted because part 1236 established Standards as guidelines only, and section 4513b provides that FHFA may require a corrective plan if a regulated entity fails to meet a Standard established as a guideline.²⁶ However, section 4513b provides that FHFA must require a corrective plan if a regulated entity fails to meet a Standard established as a regulation.²⁷ Consistent with those statutory provisions, and reflecting extension of the rule to OF, FHFA is now proposing to clarify in § 1236.4(b) that FHFA may require a corrective plan if a regulated entity or OF fails to meet a Standard established as a guideline, but must require a corrective plan if a regulated entity or OF fails to meet a Standard established as a regulation.

As a procedural matter, § 1236.4(b) provides that FHFA will inform a regulated entity or the OF that it is required to submit a corrective plan by written notice, which will also set forth FHFA's determination that the regulated entity or OF has failed a particular Standard or Standards. FHFA may otherwise inform a regulated entity or the OF that it has failed to meet a Standard, but § 1236.4(b) and (c) establish procedural requirements that govern corrective plans. For example, FHFA may provide a regulated entity a report of examination that includes a determination that the regulated entity failed to meet a particular Standard. That determination, without more, is not "written notice" for purposes of § 1236.4(b) and (c), because it does not include the statement that FHFA is requiring the regulated entity to submit a corrective plan. FHFA intends it to be explicitly clear when "written notice" for purposes of § 1236.4(b) has been provided (*e.g.*, it is likely such a notice will cite to § 1236.4(b)), to avoid confusion about the

²⁶ 12 U.S.C. 4513b(b)(1)(A)(ii).

²⁷ *Id.* 4513b(b)(1)(A)(i).

applicability of regulatory deadlines in § 1236.4(c) while permitting fulsome dialogue and communication between FHFA examiners and management of a regulated entity or OF.

Within § 1236.4(c), FHFA is proposing to relocate the requirement that plans be in writing from § 1236.4(c)(2)(i) to § 1236.4(c)(1). FHFA is also proposing to amend § 1236.4(c)(2)(ii), on submitting a corrective plan with another submission such as a capital restoration plan, to clarify that the relevant deadline may be one established by FHFA in accordance with § 1236.4(c)(2) and to expand the sorts of required plans or submissions of which a corrective plan may be a part, as deemed appropriate by FHFA. This last change is intended to reduce burden on a regulated entity or OF, if it is feasible and appropriate to combine a corrective plan under this proposed rule with another type of required plan or submission.

Finally, FHFA is also proposing conforming amendments to § 1236.4(d) and (e) to bring OF within the scope of those provisions.

F. Section 1236.5 – Failure to submit a corrective plan; noncompliance

Section 1236.5 addresses FHFA authority to require a corrective order if a regulated entity fails to submit an acceptable corrective plan or fails in any material respect to implement an approved corrective plan and processes related to such an order. FHFA is proposing to revise the term “regulated entity” in the first clause of § 1236.5(a) to “regulated entity or Office of Finance”. Similarly, FHFA is proposing to revise the term “regulated entity” to “regulated entity or Office of Finance” in § 1236.5(a)(6). However, given that the corrective measures set out in § 1236.5(a)(1) through (5) and § 1236.5(b) are not applicable to the OF, FHFA is not proposing to revise the term “regulated entity” in those provisions. FHFA is also proposing conforming amendments to § 1236.5(c), (d), and (e) to extend the application of those paragraphs to OF.

G. Appendix to Part 1236

FHFA is proposing to revise the introductory text of the appendix to be consistent with proposed amendments to the rule. Currently that introductory text states the provisions in the appendix “constitute the prudential management and operations standards established pursuant to 12 U.S.C. 4513b” and thus implies that FHFA has established all Standards as guidelines located in the appendix, even though FHFA has also established Standards as regulations located in different parts of title 12, chapter XII, of the Code of Federal Regulations. Although FHFA intends to continue locating Standards established as guidelines in the appendix, FHFA may locate any additional Standards established as regulations outside of part 1236.

FHFA is also proposing to add a sentence after the introductory text of the appendix stating that the General Responsibilities of the Board of Directors and Standards 1, 2, 8, and 10 in the appendix apply to OF as appropriate. In addition, FHFA is proposing to revise the General Responsibilities of the Board of Directors and Standards 1, 2, 8, and 10 in the appendix so that these Standards would apply to OF as appropriate. In particular, FHFA is proposing to revise the term “regulated entity” in those Standards to “regulated entity and Office of Finance” or some variation thereof.

V. Differences Between Banks and Enterprises

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), as amended by section 1201 of the Housing and Economic Recovery Act of 2008, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks’ cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director considered the differences between the Banks (including OF)

and the Enterprises as they relate to the above factors, and determined that the rule is appropriate.

VI. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that this proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation applies only to the regulated entities and the Office of Finance, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1236

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Office of Finance, Prudential Management and Operations Standards, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the Preamble, FHFA proposes to amend part 1236 of chapter XII of title 12 of the Code of Federal Regulations as follows:

PART 1236—PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS

1. The authority citation for part 1236 continues to read as follows:

Authority: 12 U.S.C. 4511, 4513(a) and (f), 4513b, and 4526.

2. Revise § 1236.1 to read as follows:

§ 1236.1 Purpose.

This part addresses prudential management and operations standards that are required and authorized by 12 U.S.C. 4513b, including establishment of Standards by Federal Housing Finance Agency (FHFA) and the processes by which FHFA can notify a regulated entity or the Office of Finance of its failure to operate in accordance with a Standard and can direct the regulated entity or the Office of Finance to take corrective action. This part further specifies the possible consequences if any regulated entity or the Office of Finance fails to operate in accordance with an applicable Standard or otherwise fails to comply with this part.

3. Revise § 1236.2 introductory text, remove the definition of “Standards”, and add the definition of “Standard(s)” to read as follows:

§ 1236.2 Definitions.

Unless otherwise indicated, terms used in this part have the meanings that they have in part 1201 of this chapter, in the Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*, or in the Bank Act, 12 U.S.C. 1421 *et seq.*

* * * * *

Standard(s) means any one (or more) of the prudential management and operations standards established by the Director pursuant to 12 U.S.C. 4513b(a). Standard includes the introductory statement of general responsibilities of boards of directors and senior management of the regulated entities set forth in the appendix to this part.

4. Revise § 1236.3 to read as follows:

§ 1236.3 Prudential standards as regulations or guidelines.

(a) *Form.* As expressly authorized by 12 U.S.C. 4513b(a), FHFA may establish Standards as regulations or guidelines.

(b) *Standards established as guidelines.* Each Standard that has been established as a guideline is located in the appendix to this part. FHFA will provide public notice of, and seek public comment on, any Standard it plans to establish as a guideline, or on any material modification to any Standard established as a guideline. FHFA may revoke any Standard established as a guideline at any time by order or notice. Standards established as guidelines are subject to the remedial provisions of §§ 1236.4 and 1236.5.

(c) *Standards established as regulations.* When establishing a Standard as a regulation or amending such a Standard, FHFA shall follow applicable rulemaking procedures of the Administrative Procedure Act, 12 U.S.C. 553. Standards established as regulations may be set forth as subparts or provisions of this part; or as other parts or subparts, or as provisions of such other parts or subparts, of this chapter XII of title 12. When not set forth as a subpart of this part, the regulation or any provision thereof that is a Standard shall be identified as a Standard in the body of the regulation. Standards established as regulations are subject to this part, including the remedial provisions of §§ 1236.4 and 1236.5, and to the enforcement provisions of 12 U.S.C. chapter 46, subchapter III.

(d) *Conflicts.* In the case of a direct conflict between a Standard established as a guideline and any FHFA regulation, when it is not possible to comply with both that Standard and the FHFA regulation, the FHFA regulation shall control.

5. Revise § 1236.4 to read as follows:

§ 1236.4 Failure to meet a Standard; corrective plans.

(a) *Determination.* FHFA may determine, based upon an examination, inspection, or any other information, that a regulated entity or the Office of Finance has failed to meet one or more of the Standards. Failure to meet any Standard may constitute an unsafe

and unsound practice for purposes of the enforcement provisions of 12 U.S.C. chapter 46, subchapter III.

(b) *Submission of corrective plan.* When a regulated entity or the Office of Finance is required to submit a corrective plan, FHFA shall inform the regulated entity or the Office of Finance of that requirement by written notice, which shall also set forth FHFA's determination that the regulated entity or the Office of Finance has failed a particular Standard or Standards. FHFA shall require a regulated entity or the Office of Finance to submit a corrective plan if FHFA determines that the regulated entity or the Office of Finance has failed to meet a Standard established as a regulation. FHFA may require a regulated entity or the Office of Finance to submit a corrective plan for failure to meet a Standard established as a guideline.

(c) *Corrective plans*—(1) *Contents of plan.* A corrective plan shall be in writing and shall describe the actions the regulated entity or the Office of Finance will take to correct its failure(s) as determined by FHFA, and the time within which each action will be taken.

(2) *Filing deadline*—(i) *In general.* A regulated entity or the Office of Finance must file a corrective plan with FHFA within thirty (30) calendar days of being notified by FHFA of the requirement to file a corrective plan, unless FHFA notifies the regulated entity or the Office of Finance in writing that the plan must be filed within a different time period.

(ii) *Other plans or submissions.* If a regulated entity must file a capital restoration plan submitted pursuant to 12 U.S.C. 4622, it may submit the corrective plan required under this section as part of the capital restoration plan, subject to the deadline established in accordance with paragraph (c)(2)(i) of this section. If a regulated entity or the Office of Finance is operating under a cease-and-desist order entered into pursuant to 12 U.S.C. 4631 or 4632, or a formal or informal agreement, or must file a response to a

report of examination or report of inspection, it may, with the permission of FHFA, submit the corrective plan required under this section as part of its compliance with that order, agreement, or response, subject to the deadline established in accordance with paragraph (c)(2)(i) of this section, but the corrective plan would not become a part of the order, agreement, or response. FHFA may also permit a regulated entity or the Office of Finance to submit a corrective plan required under this section as part of another type of required plan or submission by a regulated entity or the Office of Finance, as deemed appropriate by FHFA.

(d) *Amendment of corrective plan.* A regulated entity or the Office of Finance that is operating in accordance with an approved corrective plan may submit a written request to FHFA to amend the plan as necessary to reflect any changes in circumstance. Until such time that FHFA approves a proposed amendment, the regulated entity or the Office of Finance must continue to operate in accordance with the terms of the corrective plan as previously approved.

(e) *Review of corrective plans and amendments.* Within thirty (30) calendar days of receiving a corrective plan or proposed amendment to a plan, FHFA will notify the regulated entity or the Office of Finance in writing of its decision on the plan, will direct the regulated entity to submit additional information, or will notify the regulated entity in writing of any extended deadline for review that FHFA has established.

6. Amend § 1236.5 by revising the introductory text to paragraph (a), paragraph (a)(6), the introductory text to paragraph (c)(1), paragraphs (c)(1)(i), (c)(2) through (4), paragraph (d), and the introductory text to paragraph (e) to read as follows:

§ 1236.5 Failure to submit a corrective plan; noncompliance.

(a) *Remedies.* If a regulated entity or the Office of Finance fails to submit an acceptable corrective plan under § 1236.4(b), or fails in any material respect to

implement or otherwise comply with an approved corrective plan, FHFA shall order the regulated entity or the Office of Finance to correct that deficiency, and may:

* * * * *

(6) Require the regulated entity or the Office of Finance to take any other action that the Director determines will better carry out the purposes of the statute by bringing the regulated entity or the Office of Finance into conformance with the Standards.

* * * * *

(c) * * *

(1) *Notice.* Except as provided in paragraph (c)(4) of this section, FHFA will notify a regulated entity or the Office of Finance in writing of FHFA's intent to issue an order requiring the regulated entity or the Office of Finance to correct its failure to submit or its failure in any material respect to implement or otherwise comply with an approved corrective plan. Any such notice will include:

(i) A statement that the regulated entity or the Office of Finance has failed to submit a corrective plan under § 1236.4, or has not implemented or otherwise has not complied in any material respect with an approved plan;

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(2) *Response to notice.* A regulated entity or the Office of Finance may file a written response to a notice of intent to issue an order, which must be delivered to FHFA within fourteen (14) calendar days of the date of the notice, unless FHFA determines that a different time period is appropriate in light of the safety and soundness of the regulated entity or the Office of Finance or other relevant circumstances. The response should include:

(i) An explanation of why the regulated entity or the Office of Finance believes that the action proposed by FHFA is not an appropriate exercise of discretion;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation or other evidence in support of the position of the regulated entity or the Office of Finance regarding the proposed order.

(3) *Failure to file response.* The failure of a regulated entity or the Office of Finance to file a written response within the specified time period will constitute a waiver of the opportunity to respond and will constitute consent to issuance of the order.

(4) *Immediate issuance of final order.* FHFA may issue an order requiring a regulated entity or the Office of Finance immediately to take actions to correct a Standards deficiency or to take or refrain from taking other actions pursuant to paragraph (a) of this section. Within fourteen (14) calendar days of the issuance of an order under this paragraph, or other time period specified by FHFA, a regulated entity or the Office of Finance may submit a written appeal of the order to FHFA. FHFA will respond in writing to a timely filed appeal within sixty (60) days after receiving the appeal. During this period, the order will remain in effect unless FHFA stays the effectiveness of the order.

(d) *Request for modification or rescission of order.* A regulated entity or the Office of Finance subject to an order under this part may submit a written request to FHFA for an amendment to the order to reflect a change in circumstance. Unless otherwise ordered by FHFA, the order shall continue in place while such a request is pending before FHFA.

(e) *Agency review and determination.* FHFA will respond in writing within thirty (30) days after receiving a response or amendment request, unless FHFA notifies the regulated entity or the Office of Finance in writing that it will respond within a different time period. After considering the response or amendment request from a regulated entity or the Office of Finance, FHFA may:

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7. Amend the appendix to part 1236 by:

- a. Revising the introductory text to the appendix;
- b. Revising the introductory text and paragraphs 1. through 8. and 10. under the undesignated heading “General Responsibilities of the Board of Directors and Senior Management”;
- c. In Standard 1, revising paragraphs 1., 4., 5. through 14., and 16.;
- d. In Standard 2, revising paragraphs 1., 3., 5. through 7., and 11.;
- e. In Standard 8, revising paragraphs 1. through 3. and 7. through 12.; and
- f. Revising Standard 10.

The revisions read as follows:

Appendix to Part 1236 - Prudential Management and Operations Standards

The following provisions constitute the prudential management and operations standards established as guidelines pursuant to 12 U.S.C. 4513b(a). The General Responsibilities of the Board of Directors and Standards 1, 2, 8, and 10 apply to the Office of Finance as appropriate.

General Responsibilities of the Board of Directors and Senior Management

The following provisions address the general responsibilities of the boards of directors and senior management of the regulated entities as they relate to the matters addressed by each of the Standards, and the general responsibilities of the board of directors and senior management of the Office of Finance to the extent a particular Standard is applicable to the Office of Finance. The descriptions are not a comprehensive listing of the responsibilities of either the boards or senior management, each of whom have additional duties and responsibilities to those described in these Standards.

Responsibilities of the Board of Directors

1. With respect to the subject matter addressed by each applicable Standard, the board of directors of each regulated entity and of the Office of Finance is responsible for adopting business strategies and policies that are appropriate for the particular subject

matter. The board should review all such strategies and policies periodically. It should review and approve all major strategies and policies at least annually and make any revisions that are necessary to ensure that such strategies and policies remain consistent with the overall business plan of the entity or the Office of Finance.

2. The board of directors is responsible for overseeing management of the regulated entity or the Office of Finance, which includes ensuring that management includes personnel who are appropriately trained and competent to oversee the operation of the regulated entity and the Office of Finance as it relates to the functions and requirements addressed by each applicable Standard, and that management implements the policies set forth by the board.

3. The board of directors is responsible for remaining informed about the operations and condition of the regulated entity or the Office of Finance, including operating consistently with the applicable Standards, and senior management's implementation of the strategies and policies established by the board of directors.

4. The board of directors must remain sufficiently informed about the nature and level of the regulated overall risk exposures of the entity or the Office of Finance, including, as applicable, market, credit, operational, and counterparty risk, so that it can understand the possible short- and long-term effects of those exposures on the financial health of the regulated entity, including the possible short- and long-term consequences, as applicable, to earnings, liquidity, and economic value. The board of directors should: establish the risk tolerances of the regulated entity or the Office of Finance and provide management with clear guidance regarding the level of acceptable risks; review the entire risk management framework of the regulated entity or the Office of Finance, including policies and entity-wide risk limits at least annually; oversee the adequacy of the actions taken by senior management to identify, measure, manage, and control the risk exposures

of the regulated entity or the Office of Finance; and ensure that management takes appropriate corrective measures whenever risk limit violations or breaches occur.

Responsibilities of Senior Management

5. With respect to the subject matter addressed by each applicable Standard, senior management is responsible for developing the policies, procedures and practices that are necessary to implement the business strategies and policies adopted by the board of directors. Senior management should ensure that such items are clearly written, sufficiently detailed, and are followed by all personnel. Senior management also should ensure that the regulated entity or the Office of Finance has personnel who are appropriately trained and competent to carry out their respective functions and that all delegated responsibilities are performed.

6. Senior management should ensure that the regulated entity or the Office of Finance has adequate resources, systems, and controls available to execute effectively the business strategies, policies, and procedures of the entity or the Office of Finance, including operating consistently with each of the applicable Standards.

7. Senior management should provide the board of directors with periodic reports relating to the condition and performance of the regulated entity or the Office of Finance, including the subject matter addressed by each of the applicable Standards, that are sufficiently detailed to allow the board of directors to remain fully informed about the business of the regulated entity or the Office of Finance.

8. Senior management should regularly review and discuss with the board of directors information regarding the risk exposures of the regulated entity or the Office of Finance that is sufficient in detail and timeliness to permit the board of directors to understand and assess the performance of management in identifying and managing the various risks to which the regulated entity or the Office of Finance is exposed.

Responsibilities of the Board of Directors and Senior Management

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10. The board of directors and senior management should ensure that the overall risk profile of the regulated entity or the Office of Finance is aligned with its mission objectives.

Standard 1 - Internal Controls and Information Systems

Responsibilities of the Board of Directors

1. Regarding internal controls and information systems, the board of directors of each regulated entity and the Office of Finance should adopt appropriate policies, ensure personnel are appropriately trained and competent, approve and periodically review overall business strategies, approve the organizational structure, and assess the adequacy of senior management's oversight of this function.

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Framework

4. Each regulated entity and the Office of Finance should have an adequate and effective system of internal controls, which should include a board approved organizational structure that clearly assigns responsibilities, authority, and reporting relationships, and establishes an appropriate segregation of duties that ensures that personnel are not assigned conflicting responsibilities.

5. Each regulated entity and the Office of Finance should establish appropriate internal control policies and should monitor the adequacy and effectiveness of its internal controls and information systems on an ongoing basis through a formal self-assessment process.

6. Each regulated entity and the Office of Finance should have an organizational culture that emphasizes and demonstrates to personnel at all levels the importance of internal controls.

7. Each regulated entity and the Office of Finance should address promptly any violations, findings, weaknesses, deficiencies, and other issues in need of remediation relating to the internal control systems.

Risk Recognition and Assessment

8. Each regulated entity and the Office of Finance should have an effective risk assessment process that ensures that management recognizes and continually assesses all material risks, including credit risk, market risk, interest rate risk, liquidity risk, and operational risk.

Control Activities and Segregation of Duties

9. Each regulated entity and the Office of Finance should have an effective internal control system that defines control activities at every business level.

10. The control activities of each regulated entity and the Office of Finance should include:

- a. Board of directors and senior management reviews of progress toward goals and objectives;
- b. Appropriate activity controls for each business unit;
- c. Physical controls to protect property and other assets and limit access to property and systems;
- d. Procedures for monitoring compliance with exposure limits and follow-up on non-compliance;
- e. A system of approvals and authorizations for transactions over certain limits; and
- f. A system for verification and reconciliation of transactions.

Information and Communication

11. Each regulated entity and the Office of Finance should have information systems that provide relevant, accurate and timely information and data.

12. Each regulated entity and the Office of Finance should have secure information systems that are supported by adequate contingency arrangements.

13. Each regulated entity and the Office of Finance should have effective channels of communication to ensure that all personnel understand and adhere to policies and procedures affecting their duties and responsibilities.

Monitoring Activities and Correcting Deficiencies

14. Each regulated entity and the Office of Finance should monitor the overall effectiveness of its internal controls and key risks on an ongoing basis and ensure that business units and internal and external audit conduct periodic evaluations.

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Applicable Laws, Regulations, and Policies

16. Each regulated entity and the Office of Finance should comply with all applicable laws, regulations, and supervisory guidance (*e.g.*, advisory bulletins) governing internal controls and information systems.

Standard 2 - Independence and Adequacy of Internal Audit Systems

Audit Committee

1. The board of directors of each regulated entity and the Office of Finance should have an audit committee that exercises proper oversight and adopts appropriate policies and procedures designed to ensure the independence of the internal audit function. The audit committee should ensure that the internal audit department includes personnel who are appropriately trained and competent to oversee the internal audit function.

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3. The audit committee of the board of directors is responsible for monitoring and evaluating the effectiveness of the internal audit function of each regulated entity and the Office of Finance.

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Internal Audit Function

5. Each regulated entity and the Office of Finance should have an internal audit function that provides for adequate testing of the system of internal controls.

6. Each regulated entity and the Office of Finance should have an independent and objective internal audit department that reports directly to the audit committee of the board of directors.

7. The internal audit department of each regulated entity and the Office of Finance should be adequately staffed with properly trained and competent personnel.

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Applicable Laws, Regulations, and Policies

11. Each regulated entity and the Office of Finance should comply with applicable laws, regulations, and supervisory guidance (*e.g.*, advisory bulletins) governing the independence and adequacy of internal audit systems.

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Standard 8 - Overall Risk Management Processes

Responsibilities of the Board of Directors

1. Regarding overall risk management processes, the board of directors is responsible for overseeing the process, ensuring senior management are appropriately trained and competent, ensuring processes are in place to identify, manage, monitor and control risk exposures (this function may be delegated to a board appointed committee), approving all major risk limits, and ensuring incentive compensation measures for senior management capture a full range of risks to the regulated entity or the Office of Finance.

Responsibilities of the Board and Senior Management

2. Regarding overall risk management processes, the board of directors and senior management should establish and sustain a culture that promotes effective risk management. This culture includes timely, accurate and informative risk reports,

alignment of the overall risk profile of the regulated entity or the Office of Finance with its mission objectives, and the annual review of comprehensive self-assessments of material risks.

Independent Risk Management Function

3. A regulated entity or the Office of Finance should have an independent risk management function, or unit, with responsibility for risk measurement and risk monitoring, including monitoring and enforcement of risk limits.

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Risk Measurement, Monitoring, and Control

7. Each regulated entity and the Office of Finance should measure, monitor, and control its overall risk exposures, reviewing, as applicable, market, credit, liquidity, and operational risk exposures on both a business unit (or business segment) and enterprise-wide basis.

8. Each regulated entity and the Office of Finance should have the risk management systems to generate, at an appropriate frequency, the information needed to manage risk. As applicable, such systems should include systems for market, credit, operational, and liquidity risk analysis, asset and liability management, regulatory reporting, and performance measurement.

9. Each regulated entity and the Office of Finance should have a comprehensive set of risk limits and monitoring procedures to ensure that risk exposures remain within established risk limits, and a mechanism for reporting violations and breaches of risk limits to senior management and the board of directors.

10. Each regulated entity and the Office of Finance should ensure that it has sufficient controls around risk measurement models to ensure the completeness, accuracy, and timeliness of risk information.

11. Each regulated entity and the Office of Finance should have adequate and well-tested disaster recovery and business resumption plans for all major systems and have remote facilities to limit the impact of disruptive events.

Applicable Laws, Regulations, and Policies

12. As applicable, each regulated entity and the Office of Finance should comply with all applicable laws, regulations, and supervisory guidance (*e.g.*, advisory bulletins) governing the management of risk.

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Standard 10 - Maintenance of Adequate Records

1. Each regulated entity and the Office of Finance should maintain financial records in compliance with Generally Accepted Accounting Principles (GAAP), FHFA guidelines, and applicable laws and regulations.

2. Each regulated entity and the Office of Finance should ensure that assets are safeguarded and financial and operational information is timely and reliable.

3. Each regulated entity and the Office of Finance should have a records retention program consistent with laws and corporate policies, including accounting policies, as well as personnel that are appropriately trained and competent to oversee and implement the records management plan.

4. Each regulated entity and the Office of Finance, with oversight from its board of directors, should conduct a review and approval of the records retention program and records retention schedule for all types of records at least once every two years.

5. Each regulated entity and the Office of Finance should ensure that reporting errors are detected and corrected in a timely manner.

6. Each regulated entity and the Office of Finance should comply with all applicable laws, regulations, and supervisory guidance (*e.g.*, advisory bulletins) governing the maintenance of adequate records.

Sandra L. Thompson,

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